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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 181015951-9259-01]**

**RIN 0648-BI53**

**Fisheries of the Exclusive Economic Zone off Alaska; Halibut Deck Sorting Monitoring Requirements for Trawl Catcher/Processors Operating in Non-Pollock Groundfish Fisheries off Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement catch handling and monitoring requirements to allow Pacific halibut (halibut) bycatch to be sorted on the deck of trawl catcher/processors and motherships participating in the non-pollock groundfish fisheries off Alaska. Halibut bycatch is required to be discarded and returned to the sea with a minimum of injury in the directed groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) management areas. This action includes additional minor regulatory changes that will improve consistency and clarity of existing regulations, remove unnecessary and outdated regulations, and update cross references to reflect these proposed regulations. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plan

(FMP) for Groundfish of the GOA (GOA FMP), the FMP for Groundfish of the BSAI Management Area (BSAI FMP), and other applicable law.

**DATES:** Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2018-0122, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0122](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2018-0122), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Regulatory Impact Review (referred to as the “Analysis”) and the Categorical Exclusion prepared for this proposed rule may be obtained from

<http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address; by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov); or by fax to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Joseph Krieger, 907-586-7228 or [joseph.krieger@noaa.gov](mailto:joseph.krieger@noaa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Authority for Action**

NMFS manages the groundfish fisheries in the exclusive economic zone under the GOA FMP and under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared these FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs groundfish of the GOA and BSAI appear at 50 CFR parts 600 and 679.

### **II. Background**

Pacific halibut (*Hippoglossus stenolepis*) is fully utilized in Alaska as a target species in subsistence, personal use, recreational (sport), and commercial halibut fisheries. Halibut has significant social, cultural, and economic importance to fishery participants and fishing communities throughout the geographical range of the resource. Halibut is also incidentally taken as bycatch in groundfish fisheries. The Magnuson-Stevens Act defines bycatch as “fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. The term does not include fish released alive under a recreational catch and release fishery management program.” 16 U.S.C 1802 3(2).

The International Pacific Halibut Commission (IPHC) and NMFS manage halibut fisheries through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act) (16 U.S.C. 773-773k). The IPHC adopts regulations governing the target fishery for halibut under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations governing the fishery for Pacific halibut developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The final rule implementing IPHC regulations for 2019 published on March 14, 2019 (84 FR 9243).

Section 773c(c) of the Halibut Act also provides the Council with authority to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. The Council has exercised this authority in the development of Federal regulations for the halibut fishery such as 1) subsistence halibut fishery management measures, codified at § 300.65; 2) the limited access program for charter vessels in the guided sport fishery, codified at § 300.67; and 3) the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 773c(c) of the Halibut Act and section 303(b) of the Magnuson-Stevens Act.

NMFS has implemented regulations that limit the amount of halibut bycatch in the directed groundfish fisheries in the BSAI and GOA. Regulations establish specific limits on the amount of halibut bycatch, PSC limits, in specific groundfish fisheries in the BSAI and GOA.

These PSC limits are based on the amount of halibut discard mortality estimated under specific monitoring procedures. NMFS has implemented halibut PSC limits consistent with the requirements of the Magnuson-Stevens Act to minimize bycatch to the extent practicable while achieving, on a continuing basis, optimum yield from the groundfish fisheries.

In recent years, catch limits for the commercial halibut fishery in the BSAI and GOA have declined in response to changing halibut stock conditions. Most recently, NMFS implemented Amendment 111 to the BSAI FMP (81 FR 24714, April 27, 2016), and Amendment 95 to the GOA FMP (79 FR 9625, February 20, 2014), to further reduce PSC limits for Pacific halibut in the BSAI and GOA groundfish fisheries.

NMFS proposes regulations to implement catch handling and monitoring requirements to allow halibut bycatch to be sorted on the deck of trawl catcher/processors (CPs) and motherships when operating in the non-pollock groundfish fisheries off Alaska. The monitoring requirements included in this action have been developed and tested on vessels participating in the non-pollock groundfish fisheries. The harvest of non-pollock groundfish fisheries may be limited by existing halibut PSC limits and participating vessels are operationally different than vessels participating in pollock fisheries. As such, the scope of this action is limited to vessels participating in the non-pollock groundfish fisheries. This proposed rule would not modify existing halibut PSC limits, but it would allow halibut to be discarded faster than current monitoring requirements allow which could reduce halibut discard mortality. Reducing halibut discard mortality could maximize prosecution of the directed non-pollock groundfish fisheries that otherwise might be constrained by restrictive halibut PSC limits, and may also benefit vessels participating in the directed halibut fishery by returning more live halibut to the water.

This proposed rule would allow three categories of CPs and motherships to participate in deck sorting in the non-pollock groundfish fisheries. This proposed rule would allow deck sorting for: (1) vessels operating in the non-pollock groundfish fisheries in the BSAI and GOA under the Amendment 80 Program (72 FR 52667, September 14, 2007), also referred to as the Amendment 80 sector, (2) vessels harvesting non-pollock groundfish in the BSAI under the Western Alaska Community Development Quota Program (CDQ Program, also referred to as the CDQ Sector), and (3) CPs and motherships harvesting non-pollock groundfish in the BSAI trawl limited access sector (TLAS). The term “mothership” is defined in regulation at § 679.2, and it includes vessels that receive catch from other vessels.. See section 3 of the Analysis for a detailed description of the affected fisheries. The following sections provide descriptions of 1) the affected fisheries and halibut PSC management; 2) current monitoring requirements; 3) the need for this action; and 4) the proposed rule.

### **III. The Affected Fisheries and Halibut PSC Management**

This action would be applicable to CPs and motherships using trawl gear in the non-pollock groundfish fisheries off Alaska. This includes vessels participating in the Amendment 80 sector, BSAI TLAS, and the CDQ Sector. Existing monitoring requirements such as observer coverage, video monitoring systems, and other requirements for the affected vessels are described at §§ 679.28, 679.32, 679.51, 679.63, 679.84, and 679.93. The following section describes the affected fisheries and halibut PSC management.

#### *A. The Affected Fisheries*

##### **1. Amendment 80 Sector**

The BSAI non-pollock groundfish fishery has been prosecuted mostly by a fleet of trawl CPs. These CPs are managed under the Amendment 80 Program. The Amendment 80 Program is

a catch share program that allocates several BSAI non-pollock trawl species among fishing sectors, and facilitates the formation of harvesting cooperatives in the non-American Fisheries Act (AFA) trawl CP sector. The AFA is a limited access program for Bering Sea pollock implemented by statute in 1998 (Public Law 105-277, 16 U.S.C. § 1851 statutory note).

The Amendment 80 sector is composed of 28 CPs with history of harvesting non-pollock groundfish in the BSAI. Species allocated to the Amendment 80 sector include: Aleutian Islands Pacific ocean perch, BSAI Atka mackerel, BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole. In addition, the Amendment 80 cooperatives and vessels receive allocations of Pacific halibut and crab PSC limits for use while fishing in the BSAI to constrain bycatch, or unintended take, of these species while harvesting groundfish. Amendment 80 allocates the six target species and five prohibited species in the BSAI to the CP sector and allows qualified vessels to form cooperatives. These voluntary harvest cooperatives coordinate use of the target allocations, incidental catch allowances, and prohibited species allocations among active member vessels. Detailed information on the Amendment 80 Program is available in the final rule implementing the program (72 FR 52667, September 14, 2007), and at the Alaska Region website: (<https://alaskafisheries.noaa.gov/fisheries/amendment-80>).

Some Amendment 80 vessels also participate in the Central GOA Rockfish Program (Rockfish Program). This rule proposes that these vessels would be able to deck sort halibut PSC while participating in the Rockfish Program. The Rockfish Program is a limited access privilege program established under section 303A of the Magnuson-Stevens Act (76 FR 81248, December 27, 2011). As described later in this preamble, some of the provisions in this proposed rule would also affect monitoring provisions applicable to CPs participating in the Rockfish Program. Detailed information on the Rockfish Program is available in the final rule

implementing the program (76 FR 81248, December 27, 2011), and at the Alaska Region website: (<https://alaskafisheries.noaa.gov/fisheries/central-goa-rockfish-program>).

## 2. BSAI TLAS (Trawl Limited Access Sector)

When the Amendment 80 Program was implemented, it allocated specific amounts of non-pollock Amendment 80 species, including PSC species, to non-Amendment 80 vessels that comprise the BSAI TLAS. The BSAI TLAS includes AFA CPs, AFA catcher vessels (CVs), and other non-AFA CVs. The BSAI TLAS comprises all the trawl vessels in the BSAI except the Amendment 80 CPs. The BSAI TLAS fishery provides harvesting opportunities of some Amendment 80 species by non-Amendment 80 vessels.

Each year, NMFS allocates an amount of each Amendment 80 target species available for harvest, called the initial allowable catch, and crab and halibut PSC to the Amendment 80 sector and the BSAI TLAS sector, with the TLAS allocations representing a small proportion of overall allocation of Amendment 80 species. NMFS apportions the BSAI TLAS sector's PSC limit into PSC allowances among the following trawl fishery categories: (1) Yellowfin sole fishery, (2) rock sole/ flathead sole/ "other flatfish" fishery, (3) Greenland turbot/ arrowtooth flounder/ Kamchatka flounder/ sablefish fishery, (4) rockfish fishery, (5) Pacific cod fishery, and (6) pollock/ Atka mackerel/ "other species" fishery, which includes the midwater pollock fishery.

Under this proposed rule, AFA vessels would not be eligible to participate in halibut deck sorting when operating in pollock fisheries. However, vessels participating in the BSAI TLAS fishery –which may include AFA vessels- may choose to participate in halibut deck sorting when operating in non-pollock fisheries in the BSAI TLAS. Detailed information on the BSAI TLAS is available in the final rule implementing the Amendment 80 Program (72 FR 52667, September

14, 2007), and at the Alaska Region website:

(<https://alaskafisheries.noaa.gov/fisheries/amendment-80>).

### 3. The CDQ Sector

The CDQ sector includes all trawl and non-trawl vessels that harvest groundfish under the CDQ Program. The CDQ Program consists of six different non-profit managing organizations (CDQ groups) representing different geographical regions in Alaska. The CDQ Program receives annual allocations of TAC for a variety of commercially valuable species in the BSAI groundfish, crab, and halibut fisheries, which are then allocated among the CDQ groups. The halibut PSC limit is divided among the six CDQ groups by established percentages (71 FR 51804, August 31, 2006). Each CDQ group receives an apportionment of this halibut PSC limit as halibut prohibited species quota (PSQ), which is a specific amount of halibut that vessels fishing for that CDQ group may use in a year. The CDQ group manages the use of its halibut PSQ apportionment. The CDQ group has the responsibility to ensure that the vessels fishing its CDQ groundfish allocation do not use halibut PSQ in excess of the amount of the CDQ group's halibut PSQ. This limit is enforced at § 679.7(d)(3), which prohibits a CDQ group from exceeding its apportionment of halibut PSQ. Detailed information on the CDQ Program is at the Alaska Region website: (<https://alaskafisheries.noaa.gov/fisheries/cdq>).

#### *B. Halibut PSC Management*

Table 2b to 50 CFR part 679 and § 679.2 define halibut caught incidentally to directed fishing for groundfish as PSC. Halibut PSC in the directed groundfish fisheries of the GOA and BSAI are regulated under § 679.21. These regulations require that all vessels minimize catch of prohibited species and that all vessels discard PSC with a minimum of injury after allowing for sampling by an observer. NMFS established requirements to discard halibut caught with trawl

gear in 1977 (42 FR 9297, February 15, 1977). These requirements are intended to minimize the incidental catch of halibut in the trawl fisheries, as well as minimize the mortality of discarded halibut. NMFS requirements are also consistent with long-standing regulations adopted by the IPHC that prohibit the retention of halibut by trawl (see 2018 Annual Management Measures found at: <https://iphc.int/uploads/pdf/regs/iphc-2018-regs.pdf>).

Although participants in the non-pollock groundfish fisheries are under an obligation to avoid halibut, all halibut cannot be avoided. The groundfish fisheries cannot be prosecuted without some amount of halibut PSC because groundfish and halibut occur in the same areas at the same times and because no fishing gear or technique has been developed that can avoid all halibut PSC. NMFS manages halibut PSC in the BSAI groundfish fisheries by 1) establishing halibut PSC limits for trawl and non-trawl fisheries; 2) apportioning those halibut PSC limits among groundfish sectors, fishery categories, and seasons; and 3) managing groundfish fisheries to prevent halibut PSC use from exceeding the established limits.

While halibut is taken as bycatch by vessels using all types of gear (trawl, hook-and-line, pot, and jig), halibut bycatch in the BSAI primarily occurs in the groundfish fisheries using hook-and-line and trawl gear. Though halibut bycatch occurs in both the GOA and the BSAI, the greatest portion by weight of halibut bycatch occurs in the BSAI.

To monitor halibut PSC limits and apportionments, the Regional Administrator uses observer data on halibut incidental catch rates, halibut discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery's halibut PSC limit or seasonal apportionment is reached. Halibut incidental catch rates (weight of halibut caught per weight of groundfish total catch) are based on estimates derived from observer data of halibut incidental catch in the groundfish fisheries. DMRs are estimates of the proportion of incidentally caught

halibut that will not survive after being returned to the sea with values ranging from 0% (all halibut survived) to 100% (no halibut survived). DMRs are calculated annually on a fleet-wide basis using methodology developed by NMFS, the IPHC, and in consultation with the Council. DMRs are published in harvest specification tables in the **Federal Register**. For a given haul, the appropriate DMR is applied based on gear, sector, and year. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. See section 1.3.2 of the Analysis for additional detail about the DMR estimation process.

To minimize halibut mortality, NMFS requires that all halibut must be returned to the sea as soon as possible after they have been sampled by observers. However, current regulations require observers onboard trawl CPs and motherships to complete data collection duties in the factory of the vessel after the unsorted catch has been weighed on a motion compensated at-sea flow scale (flow scale). Halibut mortality increases with increased handling and time out of water (see section 1.3.5 of the Analysis for additional detail). In the non-pollock groundfish fisheries most of the halibut are typically out of the water for long periods of time, such as 3 to 4 hours in some cases, and are usually dead or in poor viability condition at the time of discard after weighing and sorting in the factory. This results in high halibut DMRs for the non-pollock groundfish fishery, which in turn, results in high halibut PSC mortality estimates.

### **Current Monitoring Requirements**

NMFS uses observer data to provide reliable estimates of allocated species in catch share and reliable estimates of total catch and bycatch in non-catch share fisheries. Since 1999 with the implementation of the CDQ Program, closely followed by the implementation of AFA Program in 2002, NMFS has consistently imposed additional monitoring requirements on vessels

participating in groundfish catch share programs. These monitoring requirements are necessary because of the unique incentives to misreport catch that are created by the act of assigning quota and therefore accountability to individual entities (cooperatives or vessels). Vessels affected by this action participate in catch share and non-catch share fisheries including Amendment 80 Program, BSAI TLAS, and the groundfish CDQ fisheries. Observer information is used in the NMFS Catch Accounting System to monitor catch of target and bycatch species on a daily basis. Current monitoring requirements for CPs and motherships participating in the non-pollock groundfish fisheries off Alaska vary, depending upon the specific fishery in which the vessel is participating. Each catch share program includes monitoring requirements designed to ensure that observer data produce reliable catch and bycatch estimates of allocated species. Catch monitoring regulations applicable to vessels participating in the non-pollock groundfish directed fisheries are found at §§ 679.28, 679.32, 679.51, 679.63, 679.84, and 679.93, and are summarized in the following sections of this preamble.

#### *A. Monitoring and Enforcement Tools*

##### *1. Observer Coverage*

Observers have sampled catch in the Alaska Federal groundfish fisheries since the early 1990s and have routinely collected lengths, weights, and viability metrics of the sampled catch. Amendment 80 CPs, CPs acting as motherships, and CPs managed under the Rockfish Program are required to carry two observers, one of which must have a lead level 2 endorsement for a CP using trawl gear or mothership. The current workload restriction defined at 679.51(a)(2)(iii) state that an observer's workload may not exceed 12 consecutive hours in a 24-hour period. If vessel operations require an observer to work more than 12 consecutive hours to complete sampling and data entry duties, additional observers are required. Motherships and CPs fishing

in the BSAI TLAS must also meet these same observer coverage requirements. However, CPs that choose to opt out of the Rockfish Program and Amendment 80 CPs fishing under sideboards in the GOA are required to carry only one observer. This observer follows a random sampling table to determine which hauls to sample.

## 2. Observer Access to Catch

Before catch is sorted or discarded on any trawl vessel, at-sea observers must collect data necessary to estimate halibut and groundfish catch amounts. Regulations in 50 CFR part 679 are designed to ensure that observer data result in reliable estimates of halibut and groundfish catch, and that potential bias is minimized. For example, NMFS requires fishing vessels to make all catch available for sampling by an observer; prohibits vessel crew from tampering with observer samples; prohibits vessel crew from removing halibut from a codend, bin, or conveyance system prior to being observed and counted by an at-sea observer; and prohibits fish (including halibut) from remaining on deck unless an observer is present.

Current halibut discard requirements state that an observer must first have access to sample the catch prior to sorting and discard. The specific point of discard and catch handling procedures may vary depending on each vessel's deck configuration. However, since the implementation of monitoring requirements for the Amendment 80 Program and the Rockfish Program, vessels are generally allowed only one operational line for the mechanized movement of fish from the flow scale used to weigh catch and the location where the observer collects species composition samples.

Observers sample the species composition of catch and NMFS estimates the ratio of halibut to groundfish from each haul sampled and applies it to the official total catch of groundfish for each sampled haul. NMFS applies a consistent process to determine which

halibut catch rates apply to which hauls based on vessel type, whether sampled hauls occurred on the same vessel, processing sector, nearness in time, trip target, gear type, FMP area, reporting area, special areas, management program, and observer sampling method. These factors are applied to algorithms to give a rate of incidentally caught halibut to every haul. This rate is then applied to the official total catch of each haul. Once the estimated halibut catch for every haul is calculated, DMRs are applied to calculate the amount of halibut PSC mortality accrued. See sections 1.3.2 and 4.1 of the Analysis for more detail on DMR estimation and observer coverage requirements.

### 3. Pre-cruise Meeting

Vessel owners and operators of Amendment 80 CPs are required to notify the North Pacific Observer Program (Observer Program) at least 24 hours prior to departure on a trip with an observer who has not deployed on that vessel in the last 12 months. This allows the Observer Program to schedule a pre-cruise meeting between the observer and vessel operator or manager and adequately prepare the observer(s) to successfully collect the high quality data necessary for fisheries management.

Pre-cruise meetings provide an opportunity for vessel crew and observers to discuss sampling and vessel operations prior to embarking on a trip. Pre-cruise meetings can help improve data quality, reduce conflicts between observers and vessel crew, and can assist vessel operators and managers to comply with observer related regulations.

### *B. Equipment Requirements*

#### 1. Motion Compensated At-Sea Flow Scale and Observer Sampling Station

Flow scales are required to be used in the Amendment 80 and CDQ Program fisheries, and on motherships and CPs in the BSAI TLAS fishery. Typically, flow scales are installed in

the vessel's fish processing area, below the deck. Flow scales allow all catch to be weighed. Because observer samples are extrapolated to the entire haul, catch from each haul is weighed separately on the scale. To facilitate separate weighing, catch from each haul cannot be mixed with other hauls.

Vessels are also required to provide an observer sampling station where an observer can work safely and effectively. Stations must meet specifications for size and location and must be equipped with a motion-compensated platform scale, a table, adequate lighting, floor grating, and running water. Additionally, the observer sampling station must have room to store at least ten observer sampling baskets. These vessels must also have only one operational line for the mechanized movement of catch to ensure that the observer has access to the entire catch to collect species composition samples.

Vessels subject to Amendment 80 sideboards in the GOA as specified at 679.92(b), as well as those vessels that opt out of the Rockfish Program, are not required to use a flow scale or have an observer sampling station. These vessels are prohibited from mixing hauls (combine the catch of two or more individual hauls) and must only have one operational line for the mechanized movement of catch. This is to ensure that observer data collected is appropriately attributed to each haul. However, most vessels subject to the sideboards in the GOA do continue to use the flow scale and make the observer sampling station available for use by the observer.

## 2. Video Monitoring

All CPs and motherships required to use a flow scale must have a video monitoring system that shows all areas where catch moves across the flow scale, any access point to the scale that may be adjusted by vessel crew, and the scale display and fault light. These vessels are also required to have a video monitor available to NMFS observer.

CPs and motherships participating in Amendment 80 fisheries may choose video monitoring of the inside of fish bins as one method of ensuring that catch is not selectively sorted inside the bins prior to observer sampling. This video is used to ensure that fish, including halibut, are not pre-sorted from the catch prior to observer sampling. These vessels are required to have a video monitor available at the observer sampling station.

AFA CPs and motherships that participate in the BSAI TLAS are required to have video monitoring of all areas where salmon are sorted from the catch, of all crew actions in these areas, and provide a view of the salmon storage container. The video is used to ensure that all salmon are available to the observer to conduct a census of salmon at the end of each haul. These vessels are also required to have a monitor available in the observer sampling station. System specifications for video monitoring requirements are detailed at § 679.28(e).

#### **IV. Need For This Action**

Amendment 111 to the BSAI FMP, published on April 27, 2016 (81 FR 24714), reduced halibut PSC limits in the BSAI groundfish fisheries in four groundfish sectors: the Amendment 80 sector; the BSAI TLAS (all non-Amendment 80 trawl fishery participants); the non-trawl sector (primarily hook-and-line CPs); and the CDQ Program. The purpose of Amendment 111 was to decrease BSAI halibut PSC to the extent practicable by the BSAI groundfish fisheries while continually achieving optimum yield from the BSAI groundfish fisheries. Although halibut bycatch is not believed to have significant impact on halibut stock status since most incidentally caught halibut from the BSAI Groundfish fisheries are relatively small (under 26 inches), the loss of many small individuals does impact the future number of larger halibut (over 26 inches) that are available to the directed halibut fishery (80 FR 71649, November 16, 2015).

Similarly, Amendment 95 to the GOA FMP, published on March 24, 2014 (79 FR 9625), reduced halibut PSC limits in the GOA groundfish fisheries in three sectors: the hook-and-line CP sector, the hook-and-line catcher vessel (CV) sector, and the trawl sector. The purpose of Amendment 95 was to minimize halibut bycatch in the GOA in the extent practicable, while at the same time achieving optimum yield from the GOA groundfish fishery.

By reducing halibut PSC, the final rules for Amendment 111 and Amendment 95 aimed to increase harvest opportunities for the directed halibut fisheries. However, these reductions increased the potential for the halibut PSC limit to constrain the harvest of allocated species in groundfish fisheries, thereby potentially reducing the overall economic benefit of the fisheries if the directed fisheries would be closed prior to harvesting all the allocated species.

Under current monitoring requirements for most vessels participating in the non-pollock groundfish fisheries, all halibut must be weighed along with the rest of the unsorted catch and made available for sampling by an observer prior to discard. This means that all halibut enter the fish bin and are weighed in the factory prior to observer data collection and discard, resulting in high DMRs. For several years, experiments conducted through Exempted Fishing Permits (EFPs) have tested procedures to reduce halibut discard mortality by sorting, collecting observer data, and discarding halibut from the deck of trawl CPs and motherships. The data collected during EFP fishing showed that the practice of deck sorting reduces halibut discard mortality. Results from these EFPs suggest that substantial amounts of halibut can be returned to the water and provide for additional harvest opportunity for the directed halibut fisheries. See section 1.3.5 of the Analysis for additional detail on halibut deck sorting EFPs.

In order to accurately account for halibut sorted on deck during EFP fishing, additional catch handling and monitoring requirements were necessary to ensure that an observer has access

to all halibut sorted on deck as well as all other catch in the factory for the collection of data and sampling. These requirements were necessary to ensure that observer data resulted in reliable estimates of catch and bycatch as well as mitigated safety risks due to additional time spent on deck.

NMFS also considered the costs and benefits of not implementing formal halibut deck sorting regulations. Under this alternative measure, current fisheries management and operation would remain unchanged. Halibut deck sorting could still be permitted under an EFP, provided that participating vessels adhered to the additional monitoring requirements required under the EFP. However, the purpose of an EFP is not to provide long-term management solutions. Rather, EFPs are meant to be short-term and to facilitate exploration of innovative or novel practices that may benefit fishery management practice. Deck sorting EFP renewals and annual reauthorizations are not guaranteed and it is unlikely that the deck sorting EFP could continue indefinitely. In addition, participation in the halibut deck sorting and monitoring activities outlined in this proposed regulation is voluntary, allowing industry the flexibility to assess economic conditions and to conduct halibut deck sorting when the benefits of reduced mortality provide valuable fishing opportunity that outweigh the operational cost of halibut deck sorting.

## **V. The Proposed Rule**

This proposed rule would implement catch handling and monitoring requirements to allow halibut PSC to be sorted on the deck of trawl CPs and motherships participating in the non-pollock groundfish fisheries off Alaska. NMFS and EFP participants worked together to develop the monitoring and enforcement requirements required during EFP fishing and included in this proposed rule. These requirements build upon existing monitoring and enforcement requirements (described in the Current Monitoring Requirements section of this proposed rule),

and are designed to allow halibut to be returned to the sea more quickly while also ensuring that observer data continue to result in reliable estimates of halibut incidental catch rate and viability. This proposed rule draws on the lessons learned from halibut deck sorting EFP activities to develop monitoring requirements and observer sampling protocols for halibut deck sorting (See sections 2.2 and 4.1 of the Analysis for additional detail). Participation in halibut deck sorting would be voluntary. However, any vessel choosing to participate in halibut deck sorting would be required to comply with all applicable monitoring requirements.

This proposed rule would add subpart K, § 679.120 – Halibut Deck Sorting, to part 679 to specify halibut deck sorting catch handling and monitoring requirements. Additionally, existing catch handling and monitoring regulations would be modified as necessary to be consistent with the catch handling and monitoring requirements included in this proposed rule. The catch handling and monitoring requirement included in this proposed rule were developed and tested under halibut deck sorting EFPs since 2009 (see section 1.3.5 of the Analysis for additional detail). In addition to the primary action, this would also make changes to observer sampling station inspection requirements in Federal groundfish fisheries and minor changes to bin monitoring requirements in the Amendment 80 fleet. The proposed rule would also make minor changes in terminology, reorganize regulatory text, and make other technical changes.

#### A. Halibut Deck Sorting

This proposed rule would define the term “Halibut Deck Sorting” at § 679.2. The term “Halibut Deck Sorting” is used to specify the activity of separating or removing halibut from the catch on deck, prior to fish entering the fish bin.

#### 1. Monitoring and Enforcement Tools

##### a. Observer Coverage

This proposed rule would specify observer coverage requirements for vessels participating in halibut deck sorting at § 679.51(a)(2)(vi)(F). Vessels would be required to carry on board at least two observers at all times when participating in halibut deck sorting. One of these observers must be endorsed as a lead level 2 observer and additional observers would be required if an observer's workload restriction would otherwise preclude sampling as required. Although this level of observer coverage is already a requirement for most vessels participating in the non-pollock groundfish fisheries, this proposed rule would require all vessels choosing to participate in halibut deck sorting to maintain this level of observer coverage. This requirement is necessary to ensure at least one experienced observer is deployed on a vessel when halibut deck sorting due to added difficulty and increase in observer duties associated with halibut deck sorting.

#### b. Observer Access to Catch

This proposed rule would establish prohibitions specific to halibut deck sorting at § 679.7(e). These regulations would specify that when a vessel participates in halibut deck sorting, fish must not be spilled from the codend, halibut must not be sorted, discarded, or weighed on a NMFS-approved scale unless an observer is present on deck and the vessel is in compliance with the requirements of § 679.120, which describe the vessel, crew, and catch handling and monitoring requirements for participation in halibut deck sorting. In addition, § 679.7(e) would prohibit catch from being weighed on flow scales when the observer is monitoring halibut deck sorting, unless three or more observers are present on the vessel and at least two observers are on duty. In these circumstances, one observer would monitor deck-sorting while another observer would monitor the flow scale in the factory. These regulations are necessary to ensure that an

observer has access to all catch to complete data collection duties on deck and in the factory as specified in the Observer Sampling Manual.

c. Pre-cruise meeting

Vessel owners and operators who choose to halibut deck sort would be required to notify the Observer Program to schedule a pre-cruise meeting when they have an observer onboard who has not previously been onboard within the last 12 months. This meeting must minimally include the vessel operator or manager and any observer(s) assigned to the vessel. The pre-cruise meeting is intended to familiarize the observer(s) with key vessel crew, discuss vessel operations, and talk through sample locations, as well as to get answers to sampling questions from NMFS staff before the vessel gets under way. In addition, the pre-cruise meeting would provide an opportunity to discuss any issues with Deck Safety Plans (described below) and the vessel crew's reasonable assistance necessary to allow an observer to sample halibut prior to departing on a trip.

d. Deck Safety Plan

This proposed rule would add requirements at § 679.120(d) to establish a Deck Safety Plan. Vessel owners and operators would be required to develop an approved Deck Safety Plan prior to participating in halibut deck sorting. This Deck Safety Plan would be approved annually by NMFS. If the vessel owner or operator wished change an existing Deck Safety Plan, the vessel owner or operator would be required to submit proposed changes in writing and any changes would have to be approved by NMFS. Mandatory components of this Deck Safety Plan would include: a description of safe routes for the observer to access and/or leave the deck sampling station during gear retrieval and movement; description of hazardous areas and potentially hazardous conditions on deck the observer should be aware of; a list of personal

protective equipment that must be worn by the observer while on deck; and a description of communication procedures to inform the observer when it is safe to access the deck, in order to ensure that the observer remains safe while working on the deck.

Vessel owners and operators would also be required to provide observers with a copy of the NMFS-approved Deck Safety Plan and conduct a deck sorting safety meeting prior to embarking on a trip when any one of the following—observer, vessel operator, or key crew member that will be responsible for providing notification or reasonable assistance during halibut deck sorting—boards the vessel. All elements of the vessel's Deck Safety Plan would be reviewed with the observer during this meeting.

If NMFS disapproves a Deck Safety Plan, the vessel owner and operator may resubmit a revised Deck Safety Plan or file an administrative appeal as set forth under the administrative appeals procedures set out at 15 CFR part 906.

#### e. Vessel Operator Requirements

Proposed regulations at § 679.120 would require vessel operators to notify the observer on duty at least 15 minutes prior to bringing fish on board that halibut deck sorting will occur. From the time the vessel operator notifies the observer that halibut deck sorting will occur until the codend from that haul is opened on deck, the vessel operator may choose not to engage in halibut deck sorting. In this way, the vessel operator can choose in real time if weather or vessel conditions are suitable to engage in halibut deck sorting on a particular haul. Halibut could only be sorted on deck if an observer is present, and all halibut would be required to be transported to the observer deck sampling station via a single pathway. The single pathway from which catch is conveyed to the observer will ensure that the observer has access to all halibut removed from the catch during deck sorting activities. Catch in the factory would not be weighed during halibut

deck sorting activities unless, as explained above, an additional observer is available to complete data collection duties in the factory. Vessels would be required to devise and use a visual signal to communicate to the crew when catch may not be weighed during deck sorting activities.

Each vessel's Observer Sampling Station Inspection Report would indicate the time limit for halibut deck sorting activities. The time limit may be vessel specific and would be based on factors including, but not limited to, deck space and configuration, and the best available halibut viability information. For example, a total of 30 minutes could be established for halibut deck sorting activities, which may reflect the amount of time when halibut viability is maximized. This time would begin when the codend is opened and conclude once the time limit is reached. This time limit would not exceed the time indicated on the Observer Sampling Station Inspection Report. After the time limit for halibut deck sorting is reached, all halibut not sampled by the observer on deck must be transferred to the live tank(s) and passed over the flow scale in the factory. In the future, the time limit may change in order to account for changes in vessel configuration, sampling technologies, and as new information on halibut viability becomes available. Observer Sampling Station Inspection Reports would be issued annually by NMFS.

This proposed rule would add § 679.51(e)(1)(viii)(G) to require vessel operators to provide reasonable assistance to observers during halibut deck sorting. When halibut deck sorting, vessel operators and crewmen would be required to provide halibut sorted on the deck to the observer (upon request by the observer), in order to facilitate timely sampling by the observer and reduce delays in onboard factory processing of fish.

## 2. Equipment Requirements

### a. Motion Compensated At-Sea Flow Scale and Observer Sampling Station

This proposed rule would modify existing catch weighing and data sources requirements at §§ 679.32(c)(3)(i)(C)(4), 679.63(a), 679.84(c)(1), and 679.93(c)(1) to add catch weighing requirements for CPs and motherships participating in halibut deck sorting in the Amendment 80 sector, BSAI TLAS, CDQ sector, and the Rockfish Program fisheries. These modifications would remove the requirement for halibut sorted on deck to be weighed on a NMFS-approved flow scale prior to discard. Because deck-sorted halibut are discarded from the deck and are not moved to the factory, there is no opportunity for weighing on a flow scale. Thus, under these circumstances, this requirement is unnecessary.

This proposed rule would modify regulations specifying methods used for CDQ catch estimation on CPs and motherships using trawl gear at § 679.32(c)(3)(ii)(C) to accurately describe catch accounting data sources including when halibut deck sorting occurs during groundfish CDQ fishing.

This proposed rule would modify § 679.28(d)(9) to outline and define requirements for an observer deck sampling station that must be onboard motherships and CPs participating in halibut deck sorting described at § 679.120. The observer deck sampling station would be located on deck and would be required in addition to the observer sampling station in the factory. The observer deck sampling station must meet the same specifications and requirements as the observer sampling station, with the exception that the proposed rule would require vessels participating in halibut deck sorting to have only a single pathway for halibut to be conveyed to an observer at an observer deck sampling station, as well as, a single point of discard after each work table that is visible to the observer collecting the data on discarded halibut.

#### b. Video Monitoring

This proposed rule would add video monitoring requirements specific for vessels operating in halibut deck sorting at § 679.28(l). Vessels would be required to record and retain video for the entire trip where halibut deck sorting may occur for no less than 120 days after the date the video is recorded unless otherwise notified by NMFS. Vessels would also be required to maintain full video coverage of all areas where halibut may be sorted from the catch and/or discarded on deck. The number of required cameras will vary depending on vessel configuration. These additional video monitoring requirements are needed to ensure that all halibut collected from an individual haul can be tracked and accounted for once on the vessel.

#### *B. Additional Regulatory Changes*

This proposed rule would modify regulations at § 679.28(i)(1) to remove a monitoring provision known as Option 2 - line of sight option for bin monitoring standards. This monitoring option facilitated an observer's view of fish holding bins, but is no longer used in this fishery, thus making this regulation unnecessary.

This proposed rule would modify regulations at §§ 679.28(d)(10) and 679.28(i)(5) to remove an unnecessary restriction on the duration of an observer sampling station and bin monitoring inspection and associated reports. NMFS proposes that it is not necessary to restrict the inspection to within 12 months of the date of the last inspection. Removing the requirement that restricts the validity of these inspection reports to 12 months from the date of the inspection would allow additional flexibility for the Observer Program to determine the exact length of the approval and potentially synchronize sampling station and bin monitoring inspections with other applicable equipment inspection requirements. This change could reduce the need for vessels to schedule multiple in-person inspections at different times of the year, thereby potentially reducing costs of complying with regulations.

This proposed rule would also make a number of regulatory edits to improve clarity, consistency and to remove unnecessary or out of date regulations. These modifications would have no impact on vessel operations. Paragraph § 679.28(b)(5)(v) would be removed since it describes calibration and log requirement regulations for printed reports from the fault log that were applicable to 2015 only. This proposed rule would add the word “views” when describing display requirements for cameras at §§ 679.28(e)(1)(vii) and (e)(1)(viii)(A), and would also update the Web site address for the NMFS Alaska Region in paragraph § 679.28(e)(2).

## **VI. Classification**

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the BSAI and GOA FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

### *Regulatory Impact Review (RIR)*

An RIR was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS is recommending the regulatory revisions in this proposed rule based on those measures that maximize net benefits to the Nation. Specific aspects of the economic analysis related to the impact of this proposed rule on small entities are discussed below in the Initial Regulatory Flexibility Analysis section.

### *Initial Regulatory Flexibility Analysis (IRFA)*

This IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed

rule, if adopted, would have on small entities. An IRFA describes why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

#### Number and Description of Small Entities Regulated by This Proposed Rule

This proposed rule would directly regulate the owners and operators of trawl CPs and motherships when operating in the non-pollock groundfish fisheries in the BSAI or GOA who voluntarily choose to sort halibut PSC on deck. In addition, the proposed rule would directly regulate the owners and operators of CPs and motherships subject to requirements for bin monitoring and observer sampling stations.

In 2017, the most recent complete year of data, there were 37 fishing vessels that participated in the groundfish fisheries in the BSAI or GOA and have sufficient deck configurations to participate in halibut deck sorting. Of these, 35 are CPs that participated in either the pollock or non-pollock groundfish fisheries, or in both, and two are AFA motherships. All of these vessels would be eligible to deck sort halibut as proposed under this proposed rule if they operated as a CP or mothership in a non-pollock groundfish fishery in the future. Eight of the 35 CPs also operated as motherships at some time during 2017 and two of the AFA motherships operated in the pollock fishery but not in non-pollock groundfish fisheries in 2017.

One AFA mothership did not operate in 2017 but did operate in 2016 and plans to operate in 2019. Thus, these 38 vessels, and their operators, are entities that are potentially directly regulated by this proposed rule.

In addition to these 38 vessels that are presently operating or planning to operate in the BSAI or GOA groundfish fisheries, there are four AFA permitted CPs, and one Amendment 80 permitted CP that are not presently operating in the groundfish fisheries off Alaska; however, they could possibly be used in the future. Therefore, these five vessels also are entities potentially directly regulated by this proposed rule. Any of these 40 CPs (35 presently operating, five not operating) and three AFA motherships could choose to participate in halibut deck sorting under this proposed rule if they met all of the permitting requirements for the non-pollock groundfish fisheries and the catch monitoring and handling requirements for deck sorting.

One additional CP has been identified as being eligible to participate in halibut deck sorting. This CP is somewhat unique in several ways. First, it is Amendment 80 eligible but is not currently participating in the Amendment 80 Program. Secondly, due to limited holding capacity, this vessel pre-sorts all catch on deck prior to processing. This is in contrast to the practice of other CPs that hold fish in a bin below deck before delivery to the factory where sorting will then occur. This means that all halibut are presently deck sorted and discarded and do not enter the factory. In addition, this CP has very limited deck space within which to accommodate the deck sorting equipment required by this action and such modifications may not be possible. Therefore, due to its configuration and operational practices, it is unlikely that this CP will choose to deck sort halibut PSC. Therefore, this vessel is not considered as a directly regulated entity under this proposed rule.

Three questions must be considered in classifying CPs and motherships to determine if they are small entities under the RFA. First, are the individual vessels independently owned and operated and not dominant in their field of operation, or are these vessels affiliated with any other business entities worldwide? Second, which industry classification is appropriate to use for the CPs that conduct both fish harvesting and fish processing and for the three motherships that process groundfish, but do not conduct any fishing activities themselves? Third, which income or employment threshold should be applied to identify the small entities among the universe of directly regulated entities in each of these entity categories?

The thresholds applied to determine if an entity or group of entities are “small” under the RFA depend on the industry classification for the entity or entities. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of \$11.0 million for all affiliated operations worldwide (81 FR 4469; January 26, 2016). Businesses classified as primarily engaged in fish processing are considered small entities if they employ 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all affiliated operations worldwide.

CPs engage in both fish harvesting and fish processing activities. The eight CPs that operate as motherships during some part of the year operate primarily as CPs throughout the year, so they will be considered CPs for purposes of classification under this IRFA. Since at least 1993, NMFS Alaska Region has considered CPs to be predominantly engaged in fish harvesting rather than fish processing. Under this classification, the threshold of \$11.0 million in annual gross receipts is the appropriate threshold to apply to identify any CPs that are small entities. Because the AFA motherships only process groundfish and do not conduct any fishing activities themselves, they are classified as fish processors, and the threshold of 750 employees is

the appropriate threshold to apply to identify any motherships that are small entities under the RFA.

Analysis of fish harvesting revenue at the ex-vessel level for each of the 35 potentially directly regulated CPs that made landings in 2017 reveals that several individual vessels did not exceed the \$11.0 million threshold. However, a review of ownership affiliations, and resulting aggregate revenue, reveals that the combined revenue of all co-owned CPs in each of the 10 fishing corporations that own these CPs exceeded the \$11.0 threshold and are, thus, considered large entities for RFA purposes.

Additionally, four of the five permitted CPs that are not presently participating in the affected fisheries but are permitted to do so are affiliated through ownership with other CPs that are presently operating in the groundfish fisheries off Alaska. These corporations are a subset of the 10 corporations having ownership of the 35 participating CPs and have been determined to be large entities based on aggregate revenue. The one remaining permitted CP that is not presently participating has not maintained required Federal vessel documentation since 2004 and the owner corporation is inactive according to Washington State corporate records.

One directly regulated CP has annual gross ex-vessel revenue below the \$11.0 million threshold. Thus, based on revenue analysis of the individual CPs, combined with ownership affiliation analysis, all but one of the 40 potentially directly regulated CP entities operating in the affected fishery are large entities for RFA purposes.

As noted above, three AFA motherships also could potentially deck sort halibut if they participated as a mothership in a non-pollock groundfish fishery in the BSAI or GOA. Motherships that only process groundfish are classified as fish processors and the threshold of 750 employees is the appropriate threshold to apply to identify if any of these motherships are

small entities. NMFS does not have any information that establishes whether any of the three motherships are affiliated through ownership with other business entities worldwide, so they are considered as individual entities for this analysis. In addition, NMFS does not have access to firm level employment data for these mothership firms; however, given the size of the motherships it is unlikely that firm level employment exceeds the 750 employee threshold. Therefore, NMFS has determined that these three motherships also are small entities for RFA purposes.

Although one CP potentially directly regulated by this action is a small entity under the RFA, its participation in the formal deck sorting program is doubtful given current operations and constraints. However, if this CP did choose to sort halibut PSC on deck in the future, they would do so voluntarily and only if the benefits of accounting for reduced halibut mortality outweigh the costs of compliance with program requirements. This statement is also true for the three motherships that are potentially directly regulated small entities by this action. Thus, any impact on the one CP or the three motherships would not be a significant adverse economic impact.

The proposed rule also would directly regulate the owners and operators of CPs and motherships subject to requirements for bin monitoring and observer sampling stations. Revisions to the bin monitoring regulations to remove Option 2 (the line of sight option) would affect some of the same CPs that are potentially directly regulated by the halibut deck sorting action. This element of the proposed rule would not affect the one CP that is a small entity because unsorted fish are not held below deck in bins on this vessel. As described above, none of the potentially directly regulated CPs that use fish bins subject to the bin monitoring requirements are small entities. In addition, none of these vessels have used Option 2 since

2011, and then only in conjunction with other still available options. Therefore, removing Option 2 would not impose any additional costs or restrictions or create any impacts that would be considered significant adverse economic impacts on small entities.

Revisions to the timing of the observer sampling station and bin monitoring inspection reports would affect any CP using trawl, hook-and-line, or pot gear and any mothership subject to these regulations. Some of these CPs may be small entities. However, the proposed revisions increase flexibility for the time between inspections, so do not impose any additional costs or constraints on the vessel owners or operatives. The added flexibility constitutes a slight relaxation of regulations. Therefore, although this element of the proposed rule may affect some small entities, it would not impose any adverse economic impacts.

Although NMFS identified only one small entity CP and potentially three small entity motherships that could be directly regulated by the deck sorting elements of this proposed rule, NMFS believes that it is very unlikely that this action would impose a significant adverse impact. However, NMFS has prepared this IRFA, which provides potentially affected small entities an opportunity to provide comments on this IRFA. NMFS will evaluate any comments received on the IRFA and may consider certifying under section 605 of the RFA (5 U.S.C. 605) that this action will not have a significant economic impact on a substantial number of small entities prior to publication of the final rule.

#### Recordkeeping, Reporting, and Other Compliance Requirements

This proposed rule would implement additional reporting, recordkeeping, and other compliance requirements for the owners and operators of trawl CPs and motherships who choose to sort halibut PSC on deck when operating in the non-pollock groundfish fisheries off Alaska. As noted earlier in the preamble to this proposed rule, these requirements include an observer

deck sampling station, video monitoring, an approved Deck Safety Plan, prior approval by NMFS of the plan, a meeting onboard the vessel to review the plan, observer coverage and experience requirements, and other catch handling and monitoring requirements. In addition, the vessel owner or operator must notify the Observer Program by phone at least 24 hours prior to departure when a vessel will carry an observer who has not deployed on that vessel in the past 12 months, and participate in a pre-cruise meeting if NMFS requests such a meeting. Vessel operators also must notify the observer at least 15 minutes prior to fish being brought on board during trips when the vessel participates in halibut deck sorting activities.

No specific recordkeeping, reporting, or other compliance requirements are associated with the revisions to requirements for bin monitoring and observer sampling stations. These revisions would remove an option for providing observers visual access to the fish bins and provide additional flexibility for the timing of annual bin and observer sampling station inspections and reports. These revisions would not change the existing requirements for requesting bin and sampling station inspections and the equipment, operational, and documentation requirements associated with these inspection programs.

No small entity is subject to reporting requirements that are in addition to or different from the requirements that apply to all directly regulated entities. No unique professional skills are needed for the vessel operators to comply with any of the reporting and recordkeeping requirements associated with this proposed rule.

#### Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

No significant alternatives were identified that would accomplish the stated objectives for implementing a halibut deck sorting program via regulation, are consistent with applicable statutes, and that would minimize costs to potentially affected small entities more than the

proposed rule. NMFS considered two alternatives for action in this proposed rule. Alternative 1 is the no action alternative. This alternative would continue to allow halibut deck sorting under an EFP; however, EFPs are not intended to continue indefinitely. Thus, under the no action alternative halibut deck sorting that is currently occurring under the EFP may not be an option in the future. The uncertainty of the EFP makes Alternative 1 potentially costly to vessels that would opt to continue halibut deck sorting, but would not be allowed to if the EFP was discontinued.

Alternative 2, along with Options 1 and 2, provide the greatest economic benefits. The primary economic benefit of this proposed rule is to reduce halibut mortality and allow program participants greater potential to harvest all allocations of target species at all levels of future halibut abundance and PSC limits. NMFS's administrative burden of managing the EFP process will also be reduced as will industry management and implementation costs that are presently born by the EFP applicants and the EFP manager. The economic effects on fishery participants that are affected by this proposed action are considered to be beneficial. Participants will enter the program voluntarily and only if the benefits of accounting for reduced halibut mortality outweigh the costs of compliance with program requirements.

#### *Collection-of-Information Requirements*

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under Control Number 0648-0318 (North Pacific Observer Program) and Control Number 0648-0330 (Alaska Region, Scale and Catch Weighing Requirements). The public reporting burden for the collection-of-information requirements in this proposed rule includes the time for reviewing instructions,

searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under Control Number 0648-0318 (North Pacific Observer Program) and Control Number 0648-0330 (Alaska Region, Scale and Catch Weighing Requirements). The public reporting burden for the collection-of-information requirements in this proposed rule includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Control No. 0648-0318

Vessel owners or operators of trawl CPs and motherships who choose to sort halibut PSC on deck must have a NMFS-approved Deck Safety Plan prior to participating in halibut deck sorting. When this action takes effect, 24 vessels will have participated in halibut deck sorting with a fully developed Deck Safety Plan. NMFS estimates approximately one new vessel annually in this program. Public reporting burden for the development of a new Deck Safety Plan during the first (initial) year a vessel participates in halibut deck sorting is estimated to average 12 hours. After the first year, the public reporting burden for a respondent to modify or renew an existing Deck Safety Plan is estimated to be one hour.

For vessel owners or operators of trawl CPs and motherships who choose to sort halibut PSC on deck, the public reporting burden per response to notify the Observer Program by phone is estimated to be five minutes, the burden to notify the observer is estimated at two minutes, and appeal of a disapproved Deck Safety Plan is estimated at 4 hours.

When this action takes effect, 24 vessels will have participated in halibut deck sorting with installed deck video monitoring systems and observer deck sampling stations in compliance with regulations. NMFS estimates approximately one new vessel annually in this program. Vessel owners or operators of trawl CPs and motherships who choose to sort halibut PSC on deck must install an observer sampling station on deck for use by the observer when deck sorting halibut. Public reporting burden for the installation of the observer deck sampling station during the first (initial) year a vessel participates in halibut deck sorting is estimated to average 12 hours. After the first year, annual maintenance of observer sampling stations both in the factory and on deck would be expected to be minimal and would likely be done with other factory modifications initiated by the vessel to improve processing efficiency. Annual public reporting burden after the first year is estimated at one minute.

In addition, these vessels must install a deck sorting video monitoring system on deck. Public reporting burden for the installation of the video monitoring system is estimated to average 12 hours. After the first year, annual maintenance of the video monitoring system, including routine inspection and time required to call out for any needed repair, is estimated at one minute.

Public reporting burden for the Inspection Request for Observer Sampling Station, At-sea Scales, Video Monitoring Deck Sampling Station, and Deck Video Monitoring is estimated at 8 minutes.

Public comment is sought regarding 1) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2) the accuracy of the burden estimate; 3) ways to

enhance the quality, utility, and clarity of the information to be collected; and 4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region (see **ADDRESSES**), and to OIRA by e-mail to *OIRA\_Submission@omb.eop.gov* or by fax to 202-395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at [http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html).

#### **List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Pacific halibut, Recordkeeping and reporting requirements.

Dated: April 5, 2019.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### **PART 679--FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

2. In § 679.2, add the definition for “Halibut Deck Sorting” in alphabetical order to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Halibut Deck Sorting* means the authorized sorting of halibut on deck pursuant to § 679.120.

\* \* \* \* \*

3. In § 679.7:

a. Amend paragraph (d)(4)(i)(B) by removing § 679.28(d)(8) and adding in its place § 679.28(d)(10);

b. Revise paragraph (e) to read as follows:

**§679.7 Prohibitions.**

\* \* \* \* \*

(e) *Halibut Deck Sorting*. (1) Conduct halibut deck sorting without notifying the observer at least 15 minutes prior to bringing fish onboard as described in § 679.120(e)(2).

(2) For any haul for which the notification at § 679.120(e)(2) is provided, allow fish to be spilled from the codend without an observer being present to monitor halibut deck sorting.

(3) Sort halibut from the catch prior to weighing except in compliance with requirements at § 679.120.

(4) Sort halibut on deck without an observer present to monitor halibut deck sorting.

(5) Discard halibut sorted on deck prior to the observer's completion of data collection for each halibut.

(6) Sort or discard any species other than halibut during halibut deck sorting.

(7) Conduct halibut deck sorting past the time limit set by NMFS in the vessel's Observer Sampling Station Inspection Report.

(8) Conduct halibut deck sorting without complying with the observer deck sampling station requirements at § 679.28(d)(9).

(9) Fail to have an approved Deck Safety Plan before conducting halibut deck sorting.

(10) Fail to notify the Observer Program for purposes of the pre-cruise meeting when required by § 679.120(c).

(11) Weigh catch on a NMFS-approved scale that complies with the requirements at § 679.28(b) when halibut deck sorting unless three or more observers are present on the vessel and an observer has been notified and is available to complete data collection duties in the factory.

(12) Sort halibut without a video monitoring system meeting requirements at § 679.28(l).

(13) Fail to comply with any other requirement or restriction specified in this part or violate any provision of this part.

\* \* \* \* \*

4. In § 679.28,

a. Remove paragraph (b)(5)(v);

b. Redesignate paragraph (d)(9) as (d)(10);

c. Add new paragraph (d)(9);

d. Revise newly redesignated paragraph (d)(10) introductory text and (d)(10)(iii);

- e. In newly redesignated paragraph (d)(10)(i) remove <http://alaskafisheries.noaa.gov> and add in its place <https://alaskafisheries.noaa.gov>;
- f. Revise paragraphs (e)(1)(vii), (e)(1)(viii)(A);
- g. In paragraph (e)(2) remove <http://alaskafisheries.noaa.gov> and add in its place <https://alaskafisheries.noaa.gov>;
- h. Revise paragraph (i)(1) introductory text;
- i. Redesignate paragraph (i)(1)(iii) as (i)(1)(ii) and revise newly redesignated paragraph (i)(1)(ii);
- j. Revise paragraphs (i)(2) and (i)(5);
- k. In paragraph (i)(3) remove <http://alaskafisheries.noaa.gov> and add in its place <https://alaskafisheries.noaa.gov>; and
- l. Add paragraph (l).

The revisions and additions to read as follows:

**§ 679.28 Equipment and operational requirements.**

\* \* \* \* \*

(d) \* \* \*

(9) *Observer deck sampling station.* Motherships and catcher/processors subject to § 679.120 must be equipped with a deck sampling station that meets the following requirements:

(i) *Accessibility.* All equipment required for an observer deck sampling station must be available to the observer at all times when halibut deck sorting.

(ii) *Location.* The observer deck sampling station must be located adjacent to the point of discard.

(iii) *Work space.* The observer must be able to stand upright in front of the table.

(iv) *Table—(A) Size.* The observer deck sampling station must include a table at least 0.6 m deep, 1.2 m wide, and 0.9 m high, and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. The table must be secured to the deck when halibut deck sorting. The table must be constructed to prevent fish from sliding off.

(B) *Length measuring device.* The table must have a NMFS-approved length measuring device secured to the surface of the table.

(v) *Single pathway.* There must be a single pathway for halibut to be conveyed to the observer deck sampling station. All halibut sorted on deck must pass over the observer table. There must be a single point of discard after the observer deck sampling station visible to the observer. Halibut too large to be lifted to the table may be measured on deck.

(10) *Inspection of the observer sampling station.* Each observer sampling station must be inspected and approved by NMFS prior to its use for the first time and then once each year within 12 months of the most recent inspection with the following exceptions: if the observer sampling station is moved or if the space or equipment available to the observer is reduced or removed when use of the observer sampling station is required, the Observer Sampling Station Inspection Report issued under this section is no longer valid, and the observer sampling station must be reinspected and approved by NMFS. Inspection of the observer sampling station is in addition to inspection of the at-sea scales by an authorized scale inspector required at paragraph (b)(2) of this section.

\* \* \* \* \*

(iii) *Observer Sampling Station Inspection Report.* An Observer Sampling Station Inspection Report will be issued by NMFS to the vessel owner if the observer sampling station meets the requirements in this paragraph (d). The vessel owner must maintain a current Observer

Sampling Station Inspection Report on board the vessel at all times when the vessel is required to provide an observer sampling station approved for use under this paragraph (d). The Observer Sampling Station Inspection Report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

(A) *Deck Sorting*. An Observer Sampling Station Inspection Report issued to the owner of a vessel participating in halibut deck sorting as described at § 679.120 will indicate the time limit for halibut deck sorting activities. Considerations used by NMFS to determine the time limit for halibut deck sorting include, but are not limited to, deck space and configuration, , and best available halibut viability information.

(B) [Reserved].

\* \* \* \* \*

(i) \* \* \*

(1) *Bin monitoring standards*. The vessel owner or operator must comply with the requirements specified in paragraph (i)(1)(i) of this section unless the vessel owner or operator has requested, and NMFS has approved, the video monitoring option described at paragraph (i)(1)(ii) of this section.

\* \* \* \* \*

(ii) *Option 2—Video monitoring system option*. A vessel owner and operator must provide and maintain a NMFS-approved video monitoring system as specified in paragraph (e) of this section. Additionally, the vessel owner and operator must ensure that the system:

(A) Records and retains all video for all periods when fish are inside the bin; and

(B) Provides sufficient resolution and field of view to see crew activities from any location within the tank where crew could be located.

(2) *Who must have a bin monitoring option inspection?* A vessel owner or operator choosing to operate under the video option (option 2) in paragraph (i)(1)(ii) of this section must receive an annual bin monitoring option inspection.

\* \* \* \* \*

(5) *Bin monitoring option inspection report.* A bin monitoring option inspection report will be issued to the vessel owner if the bin monitoring option meets the requirements of paragraph (i)(1)(ii) of this section. The vessel owner must maintain a current bin option inspection report on board the vessel at all times the vessel is required to provide an approved bin monitoring option under this paragraph (i)(5). The bin monitoring option inspection report must be made available to the observer, NMFS personnel, or to an authorized officer upon request.

\* \* \* \* \*

(l) *Video monitoring for halibut deck sorting.* The owner and operator of a mothership or catcher/processor subject to § 679.120 must provide and maintain a video monitoring system approved under paragraph (e) of this section when the vessel is halibut deck sorting. Additionally, the system must—

- (1) Record and retain video for an entire trip when halibut deck sorting may occur; and
- (2) Provide sufficient resolution and field of view to monitor all areas on deck where halibut may be sorted from the catch and discarded, and all crew actions in these areas.

5. In § 679.32, revise paragraphs (c)(3)(i)(C)(4) and (c)(3)(ii)(C) to read as follows:

**§ 679.32 Groundfish and halibut CDQ catch monitoring.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) \* \* \*

(C) \* \* \*

(4) The operator of a mothership taking deliveries of unsorted codends from catcher vessels must weigh all catch, except halibut sorted on deck by vessels participating in halibut deck sorting described at § 679.120, on a scale that complies with the requirements of § 679.28(b). Catch must not be sorted before it is weighed, unless a provision for doing so is approved by NMFS for the vessel. Each CDQ haul must be sampled by an observer for species composition and the vessel operator must allow observers to use any scale approved by NMFS to weigh partial CDQ haul samples.

\* \* \* \* \*

(ii) \* \* \*

(C) *Catcher/processors and motherships using trawl gear.* The weight and numbers of CDQ and PSQ species will be determined by applying the observer's sampling data to the total weight of the CDQ haul.

\* \* \* \* \*

6. In § 679.51, add paragraphs (a)(2)(vi)(F) and (e)(1)(viii)(G) to read as follows:

**§ 679.51 Observer and Electronic Monitoring System requirements for vessels and plants.**

(a) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(F) *Halibut deck sorting.* Vessels subject to § 679.120 must have at least two observers aboard at all times when halibut deck sorting may occur; one observer must be endorsed as a

lead level 2 observer. More than two observers are required if the observer workload restriction would otherwise preclude sampling as required.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(viii) \* \* \*

(G) During halibut deck sorting, providing halibut to the observer on deck.

\* \* \* \* \*

7. In § 679.63, revise paragraph (a)(1) to read as follows:

**§ 679.63 Catch weighing requirements for vessels and processors.**

(a) \* \* \*

(1) *Catch weighing.* All groundfish landed by listed AFA catcher/processors or received by AFA motherships must be weighed on a NMFS-certified scale and made available for sampling by a NMFS certified observer. The owner and operator of a listed AFA catcher/processor or an AFA mothership must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each groundfish haul is weighed separately, and that no sorting of catch, except halibut sorted on deck by vessels participating in the halibut deck sorting described at § 679.120, takes place prior to weighing.

\* \* \* \* \*

8. In § 679.84, revise paragraph (c)(1) to read as follows;

**§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.**

\* \* \* \* \*

(c) \* \* \*

(1) *Catch weighing.* All catch, except halibut sorted on deck by vessels participating in the halibut deck sorting described at § 679.120, is weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by an observer.

\* \* \* \* \*

9. In § 679.93, revise paragraph (c)(1) to read as follows:

**§ 679.93 Amendment 80 Program recordkeeping, permits, monitoring, and catch accounting.**

\* \* \* \* \*

(c) \* \* \*

(1) *Catch weighing.* All catch, except halibut sorted on deck by vessels participating in halibut deck sorting described at § 679.120, are weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately, all catch must be made available for sampling by a NMFS-certified observer, and no sorting of catch, except halibut sorted on deck by vessels participating in halibut deck sorting described at § 679.120, may take place prior to weighing.

\* \* \* \* \*

10. Add subpart K, consisting of §§679.120 and 679.121 to read as follows:

**Subpart K—Halibut Deck Sorting**

**Sec**

679.120 Halibut Deck Sorting

679.121 [Reserved]

**§ 679.120 Halibut Deck Sorting.**

(a) *Applicability.* The owner and operator of a mothership or catcher/processor using trawl gear in the non-pollock groundfish fisheries in the Gulf of Alaska and the Bering Sea and Aleutian Islands Management Area must comply with the requirements of this section when halibut deck sorting as defined at § 679.2.

(b) *Catch monitoring requirements.* (1) *Catch weighing.* When halibut deck sorting, all catch, except halibut sorted on deck, must be weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately, all catch must be made available for sampling by a NMFS-certified observer, and no sorting of catch, except halibut sorted on deck, may take place prior to weighing. When halibut deck sorting, no fish may be weighed on a NMFS-approved scale used to weigh catch at sea unless two observers are available to complete data collection duties, one on deck and one in the factory. A visual signal, specified in paragraph (e)(8) of this section, must be used to indicate when catch may not be weighed.

(2) *Observer sampling station.* An observer sampling station meeting the requirements at § 679.28(d) must be available at all times.

(3) *Observer coverage requirements.* Comply with the observer coverage requirements at § 679.51(a)(2).

(4) *Sample storage.* Provide a storage space sufficient to accommodate a minimum of 10 observer sampling baskets. This space must be within or adjacent to the observer sampling station.

(5) *Vessel crew in tanks or bins.* Comply with the bin monitoring standards at § 679.28(i)(1).

(6) *Observer deck sampling station.* An observer deck sampling station meeting the requirements at § 679.28(d)(9) must be available at all times.

(7) *Video monitoring.* Comply with the video monitoring standards specified at § 679.28(l).

(c) *Pre-cruise meeting.* Notify the Observer Program by phone at 1 (907) 581-2060 (Dutch Harbor, AK) or 1 (907) 481-1770 (Kodiak, AK) at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

(d) *Deck Safety Plan.* Submit and have an approved Deck Safety Plan prior to participating in halibut deck sorting. The owner and operator must comply with all the requirements described in the NMFS-approved Deck Safety Plan.

(1) *Deck Safety Plan requirements.* A Deck Safety Plan must:

(i) Describe the route for observers to safely access and leave the deck sampling station and specify locations where observers may shelter during gear retrieval and movement.

(ii) Describe hazardous areas and potentially hazardous conditions that could be encountered on deck.

(iii) Describe communication procedures to inform the observer when it is safe to access the deck. These procedures must identify who will tell the observer it is safe to access the deck, how that communication will happen, and how they will communicate with the observer if a new safety hazard arises while on deck.

(iv) List personal protective equipment that must be worn by the observer while on deck.

(v) List all personnel the observer may contact to report safety issues, including safety hazards identified by the observer that are not covered by the Deck Safety Plan, deviations from the Deck Safety Plan, and any conditions that would require the suspension of halibut deck sorting.

(vi) Provide procedures to ensure the observer's safety while working in the deck sampling station.

(vii) Include a scale drawing showing the deck sampling station, the routes to access and exit the deck sampling station, emergency muster location, and safety hazards that could be encountered on deck.

(2) *Approval.* NMFS will approve a Deck Safety Plan if it meets the requirements specified in paragraph (d)(1) of this section. The vessel must be inspected by NMFS prior to approval of the Deck Safety Plan to ensure that the vessel conforms to the elements addressed in the Deck Safety Plan. NMFS will normally complete its review of the Deck Safety Plan within 14 working days of receiving a complete Deck Safety Plan and conducting a Deck Safety Plan inspection. If NMFS disapproves a Deck Safety Plan, the vessel owner and operator may resubmit a revised Deck Safety Plan or file an administrative appeal as set forth under the administrative appeals procedures set out at 15 CFR part 906.

(3) *Deck Safety Plan inspection.* The vessel owner and operator must submit a complete Deck Safety Plan to NMFS by fax (206-526-4066) or email ([station.inspections@noaa.gov](mailto:station.inspections@noaa.gov)) at least 10 working days in advance of the requested date of inspection.

(4) *Location.* Deck Safety Plan inspections will be conducted on vessels tied up at docks in Kodiak, Alaska, Dutch Harbor, Alaska, and in the Puget Sound area of Washington State.

(5) *Changes to the Deck Safety Plan.* The vessel owner and operator may propose a change to the Deck Safety Plan by submitting a Deck Safety Plan addendum to NMFS. NMFS may require a Deck Safety Plan inspection described at paragraph (d)(3) of this section before approving the addendum.

(e) *Vessel operator responsibilities.* The operator of a vessel subject to this section must comply with the following:

(1) *Deck sorting safety meeting.* Provide the observer with a copy of the NMFS-approved Deck Safety Plan and make available all other applicable inspection reports described at § 679.28. The deck sorting safety meeting must be conducted prior to departing port and must include the observer, vessel operator, and key crew member who will be responsible for providing notification or reasonable assistance during halibut deck sorting. All elements of the vessel's Deck Safety Plan must be reviewed with the observer during this meeting.

(2) *Observer notification.* Before halibut deck sorting, notify the observer at least 15 minutes prior to bringing fish on board.

(3) *Observer present.* Conduct halibut deck sorting only when an observer is present in the deck sampling station.

(4) *Time limit.* Conduct halibut deck sorting only within the time limit indicated on the Observer Sampling Station Inspection Report. The time limit begins when the codend is opened on deck. When the time limit is reached, all halibut deck sorting must stop.

(5) *Single sorting pathway.* Convey all halibut sorted on deck to the observer deck sampling station via a single pathway.

(6) *Careful handling.* Handle all halibut sorted on deck with a minimum of injury.

(7) *Sorting pace.* Do not pressure or rush the observer to move halibut through the sampling process faster than the observer can handle.

(8) *Visual signal.* Use a visual signal to indicate to vessel crew when catch may not to be weighed on a NMFS-approved scale specified in paragraph (b)(1) of this section. The visual signal must be on the conveyor belt adjacent to the flow scale and visible in the view of a camera required at § 679.28(b)(8).

§679.121 [Reserved].

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